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NATURAL RESOURCE TRUSTEE TELECONFERENCE MEETING NOTES

10/24/94

**DOE-FN/FERMCO TRUSTEES
6
MINUTES**

U. S. DEPARTMENT OF ENERGY
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT
FERNALD, OHIO

FERMCO CONTRACT
DE-AC05-92OR21972
PAGE 1 OF 6

MEETING NOTES

SUBJECT: NATURAL RESOURCE TRUSTEE TELECONFERENCE
MEETING DATE: September 22, 1994
LOCATION: FERMCO Fernald Office
ISSUE DATE: October 24, 1994 File Record Storage Copy 104.5

DISTRIBUTION:	+ Attendees	++ Part-time	* Author of Notes
<u>DOE-FN</u>	<u>FERMCO</u>		<u>USFWS</u>
+Pete Yerace	+Becky Bixby		+Bill Kurey
	*John Homer		
<u>DOE-OFO</u>	+Jennifer Mailander		<u>DOI</u>
+Stephanie Bogart	+Steve Oberjohn		Don Henne
	+Mike Strimbu		
<u>OEPA</u>	+Angie Weisgerber		<u>USEPA</u>
+Tim Hull	+Keith Wilkerson		+Barbara Mazur
+Tom Schneider	+Eric Woods		
+Larry Sirnek			<u>BROWN & ROOT</u>
+Vanessa Steigerwald			+Jim Doenges

1.0 Trustee Goals/Expectations

1.1 Expectations/Successes: Natural Resource Trustees (NRTs) were asked to provide expectations and definition of success in the natural resource trusteeship process.

- Ohio EPA representatives explained that they are cautious about responding until they have had a chance to meet with the Ohio Attorney General Counsel Jack Van Clay as well as internal Ohio EPA legal counsel. Ohio EPA representatives did state, though, that they felt natural resource injury that has occurred may be addressed during the Remedial Design/Remedial Action (RD/RA) phase of remediation. Ohio EPA also stated that they are still in the process of reviewing the Hanford natural resource draft Strategy Paper.
- Pete Yerace, DOE-FN, concurred with Ohio EPA that the Feasibility Study (FS) timeframe may be moving too fast to fully integrate NRT issues and that natural resource concerns may be integrated into the final remedy selection for the Fernald Environmental Management Project (FEMP). Mike Strimbu, FERMCO, stressed that the Operable Unit 5 Record of Decision (OU5 ROD) and RD/RA documentation must remain flexible in order for this to be accomplished. In the

U. S. DEPARTMENT OF ENERGY
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT
FERNALD, OHIO

FERMCO CONTRACT
DE-AC05-92OR21972
PAGE 2 OF 6

MEETING NOTES - Continued

meantime, DOE-FN stated that the National Resource Management Plan (NRMP) may be used to avoid and reduce impacts.

- Ohio EPA explained that the trustees are a congressionally created entity and that the Fernald Citizens Task Force (FCTF) is a DOE created entity.
- Several outstanding issues resulted from this discussion. It was pointed out by DOE-FN that on-property restoration of natural resources may be dependent upon what the future land use is going to be. For instance, if the FCTF recommends industrial development of the FEMP, on-property restoration alternatives would be greatly limited. Thus, integration needs to occur with the FCTF and their recommended end use of FEMP.
- USF&WS identified its interest in the preservation of the Paddys Run riparian corridor. John Homer, FERMCO, pointed out that FCTF may recommend more than one future use for the FEMP. In one area (such as the Paddys Run riparian corridor), green space/natural resource restoration might be the recommended future use.

Actions to be taken:

- Ohio EPA will discuss the FEMP natural resource trusteeship issues with Jack Van Clay and internal Ohio EPA legal counsel.
 - NRTs will complete their review of the Hanford natural resource draft Strategy Paper and submit comments to Jennifer Mailander, FERMCO, by October 21, 1994.
- 1.2 Natural Resources Concerns: At the August 3, 1994 trustee meeting, USF&WS expressed concern regarding the division of resource responsibilities among the FEMP trustees. The NRTs were therefore asked to generally state their concerns regarding resource responsibilities.
- USF&WS stated that its primary concerns were for migratory birds, threatened and endangered species, and their associated habitats. Preservation of the Paddys Run riparian corridor was again pointed out as a special interest of USF&WS.
 - At this point, DOE-FN stated that because there are overlapping trusteeship responsibilities, trustees should avoid dividing resource responsibility. However, DOE-FN recognized that each trustee may be more knowledgeable or concerned about their particular resources.

U. S. DEPARTMENT OF ENERGY
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT
FERNALD, OHIO

FERMCO CONTRACT
DE-AC05-92OR21972
PAGE 3 OF 6

MEETING NOTES - Continued

- Ohio EPA stated that they were concerned with all resources found within the State of Ohio. Ohio EPA also agreed with DOE-FN that all trustees should work together toward the common goal of restoring natural resources.
 - Jennifer Mailander, FERMCO, pointed out that while Ohio EPA's position is understandable, a federal trustee might argue that it would have supremacy over the state and this is an excellent example of why trustees should avoid division of resources.
 - Pete Yerace, FERMCO, then added that DOE-FN was concerned about preservation of existing natural resources and addressing past releases.
- 1.3 Hanford Strategy Paper: Trustees were asked to review the Hanford natural resource draft Strategy Paper for applicability at the FEMP. The document provides planning language that establishes how the Hanford trustee council will communicate and operate.
- NRTs stated that they have not completed review of the paper but that there seemed to be information in the Hanford Strategy Paper that would not be applicable to the FEMP. Jennifer Mailander, FERMCO, explained that the Hanford site has many natural resource trustee issues that the FEMP site does not. For example, Hanford has several Native American groups as NRT's. The paper was provided as an example of what the FEMP NRTs may want to consider. FERMCO suggested that the trustees return the Hanford Strategy Paper before the next trustee meeting with areas applicable to the FEMP highlighted. Since the Hanford paper is a draft, FERMCO will update the NRTs as it is revised.
 - Ohio EPA stated that a Memorandum of Understanding (MOU) might be more appropriate for the FEMP since it is a more legally binding document than a Strategy Paper. This may be of particular significance when considerations for the funding are being made in the future. Ohio EPA has signed other MOUs within the State of Ohio and stated that they would discuss with legal counsel about the possibilities of utilizing an MOU at the FEMP. Pete Yerace, DOE-FN, requested copies of these MOUs and committed to updating the NRTs on the use of MOUs at other federal facilities.

U. S. DEPARTMENT OF ENERGY
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT
FERNALD, OHIO

FERMCO CONTRACT
DE-AC05-92OR21972
PAGE 4 OF 6

MEETING NOTES - Continued

Actions to be taken:

- FERMCO will update NRTs with of the Hanford Strategy Paper as it progresses.
- NRTs will highlight applicable sections of the Hanford Strategy Paper and return comments to Jennifer Mailander, FERMCO, by October 21, 1994.
- FERMCO will combine all comments on the Hanford Strategy Payer and send to the NRTs.
- Ohio EPA will check with legal counsel to determine if other site's MOUs can be distributed.
- Ohio EPA will provide input on other Ohio-signed MOUs (after receiving approval from legal counsel).
- Ohio EPA will discuss with legal counsel the possibilities of utilizing an MOU at the FEMP.
- FERMCO will provide additional information regarding the use of MOUs at other federal facilities.

- 1.4 New Trustees: Consensus was reached that the FCTF would be used as a liaison between the FEMP NRTs and local stakeholders. NRTs also felt that non-trustees should not be elevated to trustee status. FERMCO reported to the NRTs that the letters to the Army Corps of Engineers (ACOE) and the National Oceanic and Atmospheric Administration (NOAA) were sent out.

Actions to be taken:

- FERMCO will inform and invite FCTF to future NRT meetings and teleconferences.
- FERMCO will make follow-up telephone calls to the ACOE and NOAA.

2.0 Natural Resource Responsibilities

An additional discussion was raised regarding mineral rights as a natural resource at the FEMP. DOE-FN previously discussed this issue with the NRTs at the second NRT meeting held August 25, 1994.

- See additional discussion regarding resource responsibilities under Section 1.2.

U. S. DEPARTMENT OF ENERGY
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT
FERNALD, OHIO

FERMCO CONTRACT
DE-AC05-92OR21972
PAGE 5 OF 6

MEETING NOTES - Continued

- This agenda item was added because Don Henne of DOI was intending to participate in the teleconference; since Mr. Henne could not participate, there was no discussion on this issue.

3.0 Administrivia

- 3.1 Ohio EPA Comment on the Irreversible and Irretrievable Commitment of Resources language in the Operable Unit Four Draft Record of Decision (OU4 ROD): An attorney with the Ohio EPA commented on the OU4 Draft ROD with the concern that the irreversible and irretrievable commitment of resources (I and I) language may exclude Ohio EPA from all natural resource damage assessment (NRDA) actions.

- Pete Yerace, DOE-FN, explained that the CERCLA Section 107(f)(1) exclusion refers to potential injuries incurred as a result of future remedial actions. It does not refer to potential past injury. It is DOE's position that the State of Ohio would not be waiving natural resource damage claims it may have against DOE.

Actions to be taken:

- DOE-FN will add language to the OU4 ROD stating that the I and I exclusion refers to future remedial actions only. Subsequent to this NRT teleconference, DOE submitted its response to the Ohio EPA comment. See the comment and response at the end of this summary (Attachment 1).
 - FERMCO will provide the text change to the NRTs for review.
 - DOE-FN will notify the other CRUs that this will be a potential Ohio EPA comment on the remaining RODs.
- 3.2 Ohio EPA Review of Documents: An issue was raised at the last NRT meeting regarding how Ohio EPA would manage its dual role as both a regulator and NRT when reviewing FEMP documents. Ohio EPA stated that it will review documents solely as a regulator at this time, but they will look into having someone review documents strictly as a NRT.

Actions to be taken:

- Ohio EPA will explore the feasibility of having someone review FEMP documents solely as a NRT.

U. S. DEPARTMENT OF ENERGY
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT
FERNALD, OHIO

FERMCO CONTRACT
DE-AC05-92OR21972
PAGE 6 OF 6

MEETING NOTES - Continued

- FERMCO will now send only one copy of FEMP NRT documents to the Ohio EPA. Because of Ohio EPA's dual role as regulator and trustee, copies of correspondence to all other trustees had been sent to Ohio EPA.
- 3.3 Natural Resource Management Plan (NRMP): The FEMP NRMP is still in draft form and undergoing review. DOE-FN would still like to have the other NRTs review the draft NRMP. Pete Yerace, DOE-FN, pointed out that the NRMP as presently written primarily summarizes updated natural resource information. The next revision of the NRMP will provide more detailed mitigation and restoration steps, based on input from the NRTs and other stakeholders.

Actions to be taken:

- FERMCO will submit a draft NRMP and explanatory language to NRTs as soon as possible.
 - NRTs will review and comment on draft NRMP.
- 3.4 Next Meeting: The logistics for the next teleconference meeting, as well as several miscellaneous commitments, are as follows:

Wednesday, October 26, 1994
9:00 a.m. to 11:00 a.m.

NRTs will be called at their offices as with the first teleconference.

Actions to be taken:

- FERMCO will provide FCTF draft recommendations on future land use to NRTs (see the attached meeting summary from the September 10, 1994 FCTF meeting, Attachment 2).
- Regarding the NRDA book that FERMCO received at the DOI Conference in Chicago. The publisher of the book would not give permission to copy the articles from the book. FERMCO will provide the title and publishing information so that the NRTs can order copies.
- DOE-FN will provide Pete Yerace's comments on the preamble to 43 CFR Part 11 and its implications for the NRTs.

JH:lrh
Attachments

6